

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

THOMAS REGINALD MARTINEZ

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Plaintiff

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v

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Civil Action No. RDB-11-2596

RODERICK SOWERS and
MICHAEL ROSE, M.D.

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Defendants

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MEMORANDUM OPINION

The above-captioned case was filed on September 9, 2011. The complaint alleges that Plaintiff suffered a punctured lung during a liver biopsy. The injury to his lung went undetected during his stay at Bon Secours Hospital and he was discharged to the prison where he is currently incarcerated. Plaintiff alleges he passed out in his prison cell and was taken back to the hospital where the damage to his lung was discovered. ECF No. 2 at p. 3. He is suing the doctor who performed the liver biopsy at Bon Secours and the warden of Maryland Correctional Institution at Hagerstown for negligence.

A claim for medical malpractice is not a federal claim.¹ In cases where the complaint raises both a federal claim and a state claim for medical malpractice, this Court may exercise pendent jurisdiction over the state claim. Alternatively, a state medical malpractice claim can be raised in this Court if there is diversity of citizenship among the parties. *See* 28 U.S.C. §1332. Plaintiff and Dr. Rose are both residing in Maryland; thus, diversity jurisdiction does not apply. In light of this analysis Plaintiff's malpractice claim against Dr. Rose will be dismissed without prejudice.

¹ The instant complaint does not allege deliberate indifference to a serious medical need in violation of Plaintiff's Eighth Amendment rights. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

With respect to the remaining Defendant, Warden Sowers, the Complaint contains no allegations against him and he may not be held liable simply by virtue of his position as warden. *See Love-Lane v. Martin*, 355 F.3d 766, 782 (4th Cir.2004) (no respondeat superior liability under § 1983). Thus, the complaint against Warden Sowers must also be dismissed.

A separate Order follows.

SEPTEMBER 27, 2011
Date

RICHARD D. BENNETT
RICHARD D. BENNETT
UNITED STATES DISTRICT JUDGE